IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23404 of 2004

Between:

N. Vazraiah S/o Kotaiah
R/o D. NO. 74-6-6/1, Swamy Ayyappa Nagar, Veer Savarkar Road, Vijayawada-07 .

..... PETITIONER

AND

1 The Sr. Divil. Security Commissioner Railway Protection Force, South Central Railway, Vijayawada, Krishna District
2 Sri. J.R. Sastry, Inspector, Enquiry Officer, Railway Protection Force Nidadavolu, West Godavari District

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the first Respondent in appointing the 2nd respondent as enquiry officer vide proceedings No. B/XP.227/153/2004/07, dt 25-11-2004 to conduct enquiry in the charge sheet No. B.XP.227/153/2004/07, dt 20-10-2004 even though the 2nd respondent subordinate officer of the Asst. Security commissioner who conducted the preliminary enquiry is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and consequently direct the Respondent No. 1 to appoint the Enquiry Officer who is not below the rank of Asst. Security Commissioner.

Counsel for the Petitioner:MR.J.M.NAIDU

Counsel for the Respondents: MR.GOURI SHANKAR SANGHI

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 23404 of 2004

O R D E R:

Challenging the action of the 1st respondent in appointing the 2nd respondent as Enquiry Officer vide proceedings dated 25.11.2004 to conduct enquiry in the charge sheet No.B/XP.227/153/2004/07 dated 29.10.2004 even though the 2nd respondent is a subordinate officer in rank to Asst. Security Commissioner who conducted the preliminary enquiry, the present writ petition is filed.

The brief averments that are required for disposal of the present writ petition may be stated as follows:

The petitioner was promoted as Sub-Inspector in the Month of April, 1997. While he was working under the control of 1st respondent at Bitragutna from 2.4.2004, the 1st respondent issued a charge sheet vide proceedings No.B/XP.227/153/2004/07 dated 20.10.2004 based on a preliminary enquiry conducted by G. Ramakrishna, Assistant Security Commissioner, RPF, with regard to certain irregularities in preventing the thefts in his jurisdiction. The 1st respondent without giving opportunity to the petitioner for submitting explanation to the charge sheet, directly appointed the Assistant

Security Commissioner as Enquiry Officer. Thereafter, the 1st respondent appointed the 2nd respondent as Enquiry Officer vide proceedings No.B/XP.227/153/2004/07 dated 25.11.2004 as the earlier Enquiry Officer was transferred to Dhanbad. It is further stated that the present Enquiry Officer registered Cr.No.15/2004 under Section 3 of RPUP Act on 21.10.2004 of Nellore Post regarding committing of theft in the very same case and he has investigated the matter and booked a case against the accused therein; therefore, he is interested in prosecuting the case including proving of the departmental enquiry against the petitioner. The other grievance of the petitioner is that when the preliminary enquiry was conducted by a superior officer, a subordinate officer cannot be appointed as Enquiry Officer as it will cause prejudice. Hence the writ petition.

The respondents filed counter affidavit stating that while the petitioner was working in the capacity of SIPF, a major theft of 626 Nos. of CST-9 plates worth about Rs.2,25,360/- took place. Therefore, the 1st respondent directed Assistant Security Commissioner, Railway Protection Force, Vijayawada to cause enquiries into the alleged theft who in turn submitted a detailed report dated 20.10.2004. Subsequently a case under Section 3 of RP(UP) Act of Nellore Post was registered in Cr.No.15/2004. Basing on the preliminary enquiry conducted by the Assistant Security Commissioner, the petitioner was issued with a major charge sheet for his serious misconduct, gross neglect of duty, slack supervision and disobeying lawful orders of his superior officers and a departmental enquiry was ordered nominating Assistant Security Commissioner, Railway Protection Force, Guntur as the Enquiry

Officer vide proceedings dated 20.10.2004. According to the respondents, the RPF members are governed by RPF Rules, 1987 and the 1st respondent has acted within the purview of these rules. As the Assistant Security Commissioner who was nominated as Enquiry Officer was transferred to Dhanbad, the 1st respondent nominated the 2nd respondent as Enquiry Officer, he being an Inspector and higher in rank to the petitioner, in terms of Rule No.153.2 (a) of the RPF Rules, 1987. There is no bar in conducting departmental enquiry by the 2nd respondent as per RPF Rules. Though the writ petitioner expressed his unwillingness regarding nomination of Enquiry Officer on 12.12.2004, but he has not offered any valid reason for changing the Enquiry Officer. Though the petitioner has received the order of appointment of 2nd respondent on 26.11.2004, he submitted his unwillingness on 12.12.2004. The circular dated 10.4.1962 quoted by the petitioner pertains to Railway Servants Conduct Rules 1968, which is not applicable to RPF personnel. It is a fact that the Enquiry Officer, respondent No.2 herein, is one of the members in the committee to investigate the major crime at Bitragunta Outpost wherein 626 Nos. of CST-9 plates were stolen valued Rs.2,25,360/- and book the criminals, duly recovering the property, whereas the charges framed against the petitioner are different i.e. for his serious misconduct, gross neglect of duty, slack supervision and disobeying lawful orders of his superior officers, which is unconnected to the investigation of the case and also to the respondent No.2. The charges are not based upon preliminary enquiry conducted by the Assistant Security Commissioner. There is no provision in the charge sheet to call for

the explanation and then initiate departmental enquiry. Hence, the respondents pray to dismiss the writ petition.

Learned counsel for the petitioner contended that when a preliminary enquiry was conducted by an officer in the cadre of Assistant Security Commissioner, an Enquiry Officer below the rank of Assistant Security Commissioner cannot be appointed; that the present Enquiry Officer is the investigating officer in Cr.No.15/04 for which incident the allegation is that the writ petitioner has not taken care and he acted in negligent manner and, therefore, appointing the 2nd respondent as Enquiry Officer would cause prejudice to the case of the petitioner.

On the other hand, learned counsel for the respondents contended that respondent No.2 is not the investigating officer in Cr.No.15/04 of Nellore Post; that as per the Rules not below the rank of Inspector can be appointed as Enquiry Officer and the 2nd respondent is nothing to do with the departmental enquiry of the petitioner since he is not the investigating officer and therefore no prejudice will be caused to him; that as per the rules governing the service conditions of the petitioner, any officer not below the rank of Inspector can be appointed as Enquiry Officer and, therefore, the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this court.

Under Rule 153(2) of Railway Protection Force Rules, 1987 (for short, 'the Rules'), whenever disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an enrolled member of the Force, it may itself inquire into, or appoint an Inquiry

Officer higher in rank to the enrolled member charged but not below the rank of Inspector, or institute a court of Inquiry to inquire into the truth thereof. This Rule provides for the disciplinary authority to appoint an Enquiry Officer above the rank of enrolled member charged but in any case he should not be less than the rank of Inspector. The contention of the learned counsel for the respondents is that since the petitioner is in the cadre of Sub-Inspector, the Inspector who is the 2nd respondent is appointed as Enquiry Officer and the same is not against this rule. But, the learned counsel for the petitioner contended that the rules governing the service conditions of the Railway employees would also be applicable. As per Rule 21 of the Rules, the superintendence of the affairs shall vest in Central Government and it may issue such directions relating to administration of the Act and these rules, as it may think necessary. Rule 86 of the Rules contemplates retirement on superannuation where the superior officers and enrolled members of the Force shall retire from service on attaining the age of superannuation in accordance with the provisions of the extant Railway Rules. Rule 117 of the said Ruels reads, “In all other matters not prescribed in these rules, all members of the Force, irrespective of their ranks, shall be governed by the provisions contained in the extant Railway Rules as applicable to railway servants of corresponding grades”.

Under Rule 145 of the Rules, the Railway Service (Conduct) Rules, 1966 as amended from time to time shall, sofar as may be, apply to all members of the Force as they apply to Railway servants.

Therefore, these provisions make it clear that the Railway

Service (Conduct) Rules and also the extant Railway Rules are applicable to the Railway servants of corresponding grades irrespective of their ranks.

Rule 2(k) of the Rules defines, “extant Railway Rules” means the rules contained in the Indian Railway General Code, Indian Railway Establishment Code, Indian Railway Establishment Manual, Indian Railway Code for Accounts Department, Indian Railway Code for Stores Department, Indian Railway Code for Engineering Department and includes any Rules made under the Indian Railways Act, 1890 for railway servants”. As per Rule 11 of Discipline, Appeal and Conduct Rules applicable to the railway employees, the disciplinary authority should appoint only those Enquiry Officers who are free from bias. Although there is no provision in the D&A rules for filing an appeal against order appointing a person as an inquiry officer, such an order could be reviewed under the said Rules. Accordingly it has been decided by the Railway Board, that whenever a delinquent railway servant makes a request for change of Enquiry Officer on the ground of bias, the departmental proceedings should be stayed and the application along with other relevant material forwarded to the appropriate reviewing authority for necessary orders.

Under clause (3) of these Discipline, Appeal & Conduct Rules, these Rules shall apply to every railway servant but shall not apply to:--

a. any member of the All India Services;

b. any member of the Railway Protection Force as defined in the Railway Protection Force Act, 1957".

No doubt, this provision excludes the Railway Protection Force from the purview of this Discipline, Appeal & Conduct Rules, but, in my considered opinion, the Rules 21, 86, 117, 145 and 146 (1) of the RPF Rules read together in juxtaposition as they have got to be, it is clear that the rules governing the service conditions of the railway employees and the directives issued from time to time shall also be applicable to the members of the Armed Reserve Force. In one of the circulars issued by the Railway Board in its letter dated 10.4.1962, when it was brought to the notice of the Board that in certain cases departmental enquiry was held by an officer of a status lower than the one who had conducted the fact finding enquiry and that in such cases there was a possibility of the enquiry officer being influenced by the findings of the superior authority, the Board have considered the matter and decided that the departmental enquiries for disciplinary action should not be entrusted to an officer lower in status than that of the officer who conducted the fact finding enquiry.

So, in this case admittedly a preliminary enquiry was conducted by the Assistant Security Commissioner. Perhaps that is the reason why in the first instance another Assistant Security Commissioner was appointed as an Enquiry Officer to conduct enquiry against the writ petitioner. But, consequent to the transfer of the Enquiry Officer in the cadre of Assistant Security Commissioner, the 2nd respondent herein who is in the cadre of Inspector was appointed. Since the preliminary enquiry was conducted in the cadre of Assistant Security Commissioner, in the fitness of things and in all

fairness the Enquiry Officer should be in the cadre of Assistant Security Commissioner or above his rank so that a fair and impartial enquiry could be conducted. Contrary to the Rules, the 2nd respondent was appointed, who is lower in rank to the cadre of Assistant Security Commissioner. Since the 2nd respondent is in lower cadre than that of the Assistant Security Commissioner, there is every possibility of the Enquiry Officer being influenced by the findings of the superior authority. Precisely for that reason, the Railway Board issued letter dated 10.4.1962 to all the officers. Therefore, the change of Enquiry Officer consequent on the transfer of Assistant Security Commissioner who was appointed in the first instance as Enquiry Officer, is not in accordance with the rules governing the service conditions of the writ petitioner.

The charge against the petitioner is that he refused to acknowledge the theft complaint regarding the theft of 1000 Nos. of CST-9 plates on 8.10.2004 and he has not taken precautionary measures and failed to prevent the theft of 626 Nos. of CST-9 plates valued Rs.2,25,360/- from the stocks available and that there was slack supervision on his part and he neglected his duties and not caused discreet enquiries into the theft of Railway property which amounts to serious misconduct. The 2nd respondent is one of the members in the committee to investigate the major crime at Bitragunta Outpost wherein 626 Nos. of CST-9 plates valued Rs.2,25,360/- were stolen. According to the petitioner, the 2nd respondent is the Investigating Officer who registered the case. No doubt, the registration of the case by the 2nd respondent may not have any direct impart on the departmental proceedings, but in the

departmental proceedings it is the case of the department that the petitioner failed to prevent the theft of 626 Nos. of CST-9 plates valued Rs.2,25,360, which were stolen because of his negligence. Therefore, the grievance of the petitioner is that the 2nd respondent's enquiry may be biased in view of the fact that he is the Investigating Officer. The same cannot be ruled out because the charge is that the petitioner was gross negligent in discharge of his duties on 8.10.2004 and failed to prevent the theft.

Therefore, in my considered opinion, the 1st respondent ought not to have appointed the 2nd respondent as an Enquiry Officer and the petitioner brought the same to the notice of the Enquiry Officer when the Enquiry Officer conducted departmental enquiry on 12.12.2004. It is not a case of non-availability of Assistant Security Commissioners or the officers above the rank in the 1st respondent-Railways. As a matter of fact, the petitioner is not choosing any particular officer but he prays to give a direction to the 1st respondent to appoint any other Enquiry Officer in the cadre of Assistant Security Commissioner or above his rank. Since the guidelines issued by the Railway Board are very clear that in case a preliminary enquiry is conducted by an officer, in the fairness of things regular departmental enquiry an enquiry officer above his rank can be appointed so that such Enquiry Officers shall not be influenced by the previous officer who conducted the preliminary enquiry. There is every possibility for the 2nd respondent to act in biased manner inasmuch as he is the investigating officer in a criminal case for which the petitioner failed to take precautionary measures in preventing the theft.

Hence, the writ petition is allowed directing the 1st respondent to appoint an officer in the cadre of Assistant Security Commissioner or above as Enquiry Officer and thereafter proceed with the enquiry as per the Rules. It is made clear that the appointment of the 2nd respondent as Enquiry Officer is unsustainable for the aforesaid reasons. No costs.

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K.C. Bhanu, J.

Date: --12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Sr. Divisional Security Commissioner, Railway Protection Force, South Central Railway, Vijayawada, Krishna District.
2. 2CD copies